IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6164 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

UDESINH MADARSINH VAGHELA

Versus

STATE OF GUJARAT

Appearance:

MR KR JANI for Petitioner

GOVERNMENT PLEADER for Respondent No. 1

MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 31/08/2000

ORAL JUDGEMENT

#. The following order was passed by the District Magistrate, Kachchh - Bhuj - Detaining Authority in exercise of powers conferred by subsection 2 of section 3

of Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980.

"Whereas, I, KAMAL DAYANI, I.A.S. District Magistrate, Kutch satisfied with respect to person known as Shri UDESINH MADARSINH VAGHELA, Age about 51 years, residing at GEDI, Taluka Rapar, Dist.Kutch that with a view to prevent him from acting in any manner prejudicial to maintenance of supplies of Blue Kerosene Essential to the commodity it is necessary to do so.

xxxxxx xxxxxx xxxxxx"

The order of detention was executed on the next day, that is, on 28.5.2000 and at present the petitioner is under the order of detention at Central Jail, Sabarmati, Ahmedabad. Grounds for detention were supplied to the petitioner with all annexures. The say of the Detaining Authority was that the authority was satisfied that the petitioner is indulging in black marketing and illegal storrage of blue kerosene meant for public distributory system (PDS). 8400 liters blue kerosene were found lying in the open Varanda of the present petitioner. It is the say of the petitioner that his real brother is running Fair Price Shop. The Detaining Authority has recorded the statement of the petitioner when the Varanda was searched and he pleaded the case of innocent.

#. Learned counsel appearing for the petitioner has rightly not defended the case of the petitioner on merits because this court cannot sit in appeal against the order of detention. It is argued that, by exercising the jurisdiction under Article 226 of the Constitution of India, the detention order should be taken in judicial review and the same should be set aside as the statutory/constitutional obligations are not complied with by the Detaining Authority especially in the light of Article 22(5) of the Constitution of India. It is pointed out that the representation made by the detenu dated 16.6.2000 is very clear and it is the case of the petitioner from the beginning that he has not been supplied all the documents relied and referred to by the Detaining Authority which are part of the grounds of detention in the language known by the petitioner.

#. The kerosene found from the Varanda of the present petitioner was sent for analysis to the laboratory of Indian Oil Corporation at Gandhidham. It may not be a matter of relevance, but it is important to note that

there is no reference in the order of the Detaining Authority that the laboratory who examined the kerosene and analysed the liquid sent for analysis was the authorised Government laboratory. The IOC authority after analysing the sample had sent the report with a forwarding letter. According to the petitioner, these two vital documents are in English. He does not know the English language. So, the same created disability in making effective representation in the stipulated period before the Detaining Authority or at the earliest occasion. I was shown two documents subsequently supplied to the petitioner by the Detaining Authority and on comparisan I found that these two documents are translation of the documents which were supplied to the detenu at serial nos.43 and 45. On perusal of the entire set of the documents on the file, I am satisfied that the petitioner had never applied for the translated copies of the documents earlier supplied in the English language, but it seems that, after receipt of the representation by the authority sitting at Delhi in the Central Government must have directed the District Magistrate to supply the translated copies of the documents which were initially supplied to the petitioner in the language unknown to him.

#. During the course of submissions of learned counsel appearing for the parties, to get an effective assistance the court has asked/pointed out the question as to whether what is the trend of this court when the documents prepared or written by the technical personnel such as Doctor, Engineer, Laboratory Technician etc. are supplied to the detenu in such cases and I am told that in most of the cases the English as well as translated copies are simultaneously supplied to the detenue. In this case also, translated copies were supplied by the District Magistrate, but the same were at a very late stage. The forwading letter sending the translation of the relevant papers indicates that the translation was forwarded to the detenu on 22.6.2000. Looking to the date of detention, it can be legimately argued that this supply of translated copies was at a very late stage.

#. I would like to refer the observations of the Apex Court in the case of Ibrahim Ahmad Batt, Vs. State of Gujarat reported in AIR 1982 SC 1500. It is observed by the Apex Court that "two propositions having a bearing on the points at issue in the case before us, clearly emerge from the aforesaid resume of decided cases (a) all documents, statements and other materials incorporated in the grounds by reference and which have influenced the mind of the detaining authority in arriving at the

requisite subjective satisfaction must be furnished to the detenu along with the grounds or in any event not later than five days ordinarily and in the exceptional circumstances and for reasons to be recorded in writing not later than 15 days from the date of his detention and (b) all such material must be furnished to him in a script or language which he understands and failure to do either of the two things would amount to a breach of the two duties cast on the detaining authority under Art.22(5) of the Constitution." It is well settled legal position that all the relevant documents should be supplied to the detenu in the language known to him otherwise it can be equated with nonsupply of the documents.

#. Learned counsel appearing for the petitioner has rightly referred para 12 of the judgment reported in 2000(2) GLH 540 wherein this court has held through Justice M.R.Calla that, "what applies to a documents would equally apply to furnishing translated copy of the document in the language known to and understood by the detenu, should the document be in a different language."

#. It is pertinent to note that, this ground is agitated by the petitioner since inception and though the affidavit-in-reply is filed by the Detaining Authority-District Magistrate has not responded to the grounds mentioned in sub-para 7 of para 3 of the petition. It is not the case that the documents supplied to the detenu at serial Nos.43 and 45 could not be translated. On the contrary, detail translation was sent to the detenu after the receipt of the representation by the Central Government. I feel that, this act of sending translated copies subsequently is an attempt to rectify the mistake committed earlier in the order of detention when it was rendered by the Detaining Authority cannot continue merely because translated copies are supplied while dealing with the representation or pending this petition.

#. Ms.Davawala, learned counsel appearing for the Union of India has tendered on record the counter affidavit and she has noting to add as the grievances raised by the petitiner in this petition are mainly against the State of Gujarat and the Detaining Authority.

#. In nutshell on the sole ground, the petitioner can succeed and I am incline to allow the petition on the very ground without going into the merits of other gorunds pleaded by the petitioner. The petition shall have to be allowed, therefore, the same is allowed.

Impugned order of detention dated 27.5.2000 passed by the Detaining Authority is quashed and set aside. The petitioner should be set forth at liberty forthwith if he is not required otherwise.

(C.K.Buch,J)

(pathan)